



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 3001-00

27 July 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Naval Reserve filed enclosure (1) with this Board requesting that his record be corrected to show entitlement to reserve retirement.

2. The Board, consisting of Mr. Rothlein, Mr. Frankfurt and Ms. McCormick, reviewed Petitioner's allegations of error and injustice on 25 July 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. The record shows that Petitioner enlisted in the Naval Reserve on 11 March 1979 after a break in service of over two years. At that time he was credited with 2 years, 1 month and 14 days of active service. He then earned 15 consecutive qualifying years for reserve retirement. During this period he was advanced to EO1 (E-6).

d. Petitioner reenlisted in the Naval Reserve for two years on 16 August 1994. In the next two anniversary years ending on 10 March 1995 and 10 March 1996 he earned qualifying years for reserve retirement. His two year enlistment expired on 15 August 1996. There are no further enlistments or extensions of

enlistment in the record.

e. The Board has obtained a Statement of Service for Naval Reserve Retirement which shows that he was credited with 49 retirement points in the anniversary year ending 10 March 1997, 15 retirement points in the anniversary year ending 10 March 1998, and 16 retirement points from correspondence courses in the next anniversary year. The statement of service shows that he has been credited with 19 years, 1 month and 45 days of service for reserve retirement.

f. Petitioner states that he had heart attacks in July and November 1996 and could not continue in the Naval Reserve. When he discovered that he did not have 20 qualifying years he completed several correspondence courses.

g. The Board notes that there are no discharge entries at the expiration of the enlistment on 15 August 1996 and no contracts for further service after that date in the record.

h. The Board is aware that a retirement year can be prorated if a discharge or reserve retirement occurs during an anniversary year. Therefore, if Petitioner had been advised to extend his enlistment and retire on 1 March 1997, his 49 retirement points would have allowed him to be credited with 357 days for reserve retirement. The number of days from 11 March 1996 to 1 March 1997 is 349 days. When this period is added to the 19 years, 1 months and 45 days of previous qualifying service, he would have over 20 qualifying years and been eligible for retired pay at age 60.

h. The Board is also aware that the Uniform Retirement Date Act 5 U.S.C. 8301 requires that the effective date of any retirement be the first day of the month.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. Since Petitioner had earned 17 consecutive qualifying years, it was clear to the Board that if he had realized his situation, he would have extended his enlistment and either earned one additional retirement point in the anniversary year ending 10 March 1997 or requested retirement on 1 March 1997. Given the circumstances, the Board concludes that the record should be corrected to establish his eligibility for retired pay at age 60.

Since there are no enlistment contracts in the record to allow service past 15 August 1996, the record should be corrected to show that he extended his last reenlistment for a period of two years. The record should then be corrected by moving one retirement point from the year in which he received 16 points to the anniversary year ending 10 March 1997. With this correction, Petitioner will be credited with over 20 qualifying years. Given the requirements of the Uniform Retirement Date Act, the Board further concludes that the record should be further corrected to show that he transferred to the Retired Reserve in the rate of EO1 on 1 August 1998.

This Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand Petitioner's status in the Retired Reserve.

RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that he extended the two year enlistment of 16 August 1994 for a period of two years.
 - b. That Petitioner's naval record be further corrected by transferring one retirement point from the 16 retirement points earned in the anniversary year beginning on 11 March 1998, to the anniversary year ending 10 March 1997.
 - c. That Petitioner's naval record be further corrected to show that he transferred to the Retired Reserve on 1 August 1998 in the rate of EO1 vice being discharged on 15 August 1996 or any other date.
 - d. That this Report of Proceedings be filed in Petitioner's naval record.
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

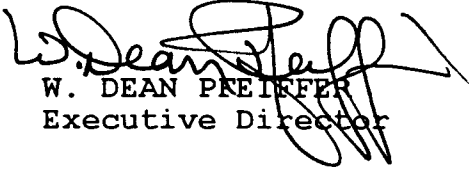
ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby

announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEIFFER
Executive Director